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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN FRANCISCO

17 THE PEOPLE OF THE STATE OF CALIFORNIA,)

18 Plaintiff,)

19 v.)

20 DEVINE COMMUNICATIONS, INC., a California)
Corporation; MEGALINK TELECOM, INC., a)
21 California Corporation; and DOUGLAS SERGE)
DEVINE, an individual,)

22 Defendants.)
23)
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ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

APR 13 2007

GORDON PARK-LI, CLERK
BY: ERNALYN BURA
Deputy Clerk

CASE NO. CGC07-462325

~~[PROPOSED]~~ FINAL
JUDGMENT AND
PERMANENT INJUNCTION

1
2 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF SAN FRANCISCO
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5 PEOPLE OF THE STATE OF CALIFORNIA,

6
7 Plaintiff,

8 v.

9 DEVINE COMMUNICATIONS, INC., a California
10 Corporation; MEGALINK TELECOM, INC., a
California Corporation; DOUGLAS SERGE
DEVINE, an individual,

11 Defendants,
12

Case No.:

**[PROPOSED] FINAL
JUDGMENT AND PERMANENT
INJUNCTION**

Dept:

Judge:

Action Filed:

13 Based on a review of the Complaint filed in this action, the Stipulation for Entry of Final
14 Judgment and Permanent Injunction ("Stipulation"), and the Final Judgment and Permanent
15 Injunction ("Judgment"), the Court finds that:

16 1. Plaintiff the People of the State of California, appearing through its attorneys,
17 Edmund G. Brown Jr., Attorney General, by Paul Stein, Deputy Attorney General, and the
18 California Public Utilities Commission, by Chris Witteman, Public Utilities Counsel, and
19 Defendants Devine Communications, Inc. and Megalink Telecom, Inc., appearing through
20 counsel, by Curtis Woo, Esq., and Douglas Devine, appearing personally and through counsel, by
21 Curtis Woo, Esq. (collectively, the Defendants may be referred to hereafter as the "Named
22 Defendants"), have jointly signed a Stipulation for entry of this Judgment, which is filed
23 concurrently with this Judgment;

24 2. This Judgment is entered without trial, without the adjudication of any issue of
25 fact or law, and without any admission by the Named Defendants as to any fact or issue of law
26 raised by the Complaint, including any admission as to whether, in the absence of the Stipulation,
27 this Court would have personal jurisdiction over the Named Defendants; and
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2 3. Good cause exists to enter this Judgment.

3 Therefore, the Court **ORDERS, ADJUDGES, AND DECREES:**

4 **JURISDICTION**

5 4. This Court has jurisdiction of the subject matter of this action. This Court is
6 exercising personal jurisdiction over the Named Defendants pursuant to, and only pursuant to,
7 the Stipulation and the recitations contained therein, and makes no finding with respect to
8 whether it would have personal jurisdiction over the Named Defendants in the absence of the
9 stipulation. Venue as to all matters between the parties related hereto lies in this Court.

10 **PERMANENT INJUNCTION REGARDING DEFENDANTS' BUSINESS PRACTICES**

11 **Definitions**

12 5. For purposes of these injunctive provisions, the following definitions shall apply:

13 A. "Prepaid Calling Card" shall be defined as that term is defined in Business and
14 Professions Code section 17538.9, and as the term "telephone prepaid debit card" is used in
15 California Public Utilities Code section 885.

16 B. "Legible" means easily readable and in a minimum typeface size of eight points.

17 C. "Ancillary Charges" means all surcharges, fees, connection charges, or other
18 assessments of any kind that may be imposed on consumers by the Named Defendants, other
19 than the per-unit (e.g., per-minute) rate charged by the Named Defendants;

20 D. "Clearly and conspicuously" means the disclosure must be placed and printed or,
21 in oral statements, orally disclosed so that it will attract the reader's attention. It must be stated
22 precisely, clearly, and understandably, in words that are part of the working vocabulary of the
23 average consumer. Other content, such as text, graphics, or sound that may distract a consumer's
24 attention away from any disclosure required to be clear and conspicuous may not be used. If the
25 disclosure qualifies other information, e.g., disclosure of a surcharge or fee that may apply in
26 addition to the applicable per-unit rate, it must be prominent in comparison to the representation
27 being qualified; and it must be in close proximity to the representation being qualified.
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2 E. "United States" means the United States of America, including all fifty states and
3 any of its territories and possessions.

4 F. "Commission" means the California Public Utilities Commission.

5 **Scope of Injunction**

6 6. The injunctive provisions of this Judgment apply to the
7 Named Defendants and their affiliates, subsidiaries, officers, employees, agents, assigns,
8 successors, and all persons acting in concert or participation with any of the Named Defendants
9 that have actual or constructive knowledge of the Judgment (collectively, the "Enjoined Parties");
10 provided, however, that in the event of a violation of these injunctive provisions by any
11 employee(s) of a Named Defendant or by Mr. Drew Dennett of Austin, Texas, to the extent he
12 acts as an agent of a Named Defendant, only the Named Defendant, and not the employee(s), and
13 not Mr. Dennett, may be held liable for the violation. The Named Defendants may be held liable
14 for a violation of these injunctive provisions by any person other than an employee or Mr.
15 Dennett only to the same extent that they would be liable under California law for that other
16 person's violation.

17 7. These injunctive provisions do not apply to Prepaid Calling Cards initially placed
18 in the stream of commerce by sale or otherwise prior to the date this Judgment is entered.

19 **Injunctive Provisions Regarding Defendants' Authority to Operate in California**

20 8. Pursuant to California Business & Professions Code section 17203 and Public
21 Utilities Code section 2102, the Enjoined Parties are hereby permanently enjoined and restrained
22 from violating Public Utilities Code sections 885(a), 886, or 1013(b) by, including but not
23 limited to:

24 A. Advertising, issuing, distributing, marketing, selling, or otherwise offering
25 Prepaid Calling Cards or any other telecommunications service in California without first
26 obtaining a valid certificate of public convenience and necessity from the Commission or,
27 alternatively, being approved to register by the Commission as a non-dominant inter-exchange
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2 carrier authorized to engage in such activities;

3 B. Advertising, issuing, distributing, marketing, selling, or otherwise offering
4 Prepaid Calling Cards in California unless and until the civil penalties referenced in Paragraphs
5 11-13 of this Judgment have been paid in full.

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7 **Injunctive Provisions Regarding Defendants' Sales and Marketing Practices**

8 9. Pursuant to Business and Professions Code sections 17203 and 17535, the
9 Enjoined Parties are hereby permanently enjoined and restrained from:

10 A. Violating Business and Professions code sections 17200, 17500, or 17538.9.

11 B. Failing to legibly print Devine Communications, Inc. and its Commission-
12 approved registration number on Prepaid Calling Cards it offers, sells, or provides; provided,
13 however, that if the card is offered, sold, or provided by a successor to Devine Communications,
14 Inc., the successor shall legibly print its name and Commission-approved registration number on
15 the card.

16 C. Failing, upon request, to provide users of their Prepaid Calling Cards information
17 about any applicable rates and Ancillary Charges during the call in which the request was made.

18 D. Failing, in any advertisement for Prepaid Calling Cards that states the number of
19 minutes available to a given calling destination, or the per-unit rate charged to a given calling
20 destination, to clearly and conspicuously disclose (1) the amount of each and every Ancillary
21 Charge and (2) the conditions under which such Ancillary Charge(s) will be imposed (e.g., a
22 surcharge that is imposed after the first sixty seconds of calling time and repeats every sixty
23 seconds thereafter shall be disclosed as such);

24 E. Failing to legibly print on either the card or packaging of their Prepaid Calling
25 Cards (1) the amount of each and every Ancillary Charge on calls to destinations within the
26 United States and (2) the conditions under which such Ancillary Charge(s) will be imposed (e.g.,
27 a surcharge that is imposed after the first sixty seconds of calling time and repeats every sixty
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2 seconds thereafter shall be disclosed as such);

3 F. Failing to legibly print on the card or packaging of their Prepaid Calling Cards (1)
4 the amount of each and every Ancillary Charge on calls to destinations outside the United States
5 and (2) the conditions under which such Ancillary Charge(s) will be imposed (e.g., a surcharge
6 that is imposed after the first sixty seconds of calling time and repeats every sixty seconds
7 thereafter shall be disclosed as such), or, alternatively, to legibly print on the card or packaging of
8 their Prepaid Calling Cards (i) the amount of the highest Ancillary Charge(s) on calls to any
9 destination outside the United states and (ii) the conditions under which such Ancillary Charge(s)
10 will be imposed;

11 G. Failing, if the disclosures required by Paragraphs 9.E. and 9.F. of this Judgment
12 are printed on the Prepaid Calling Card, to ensure that said disclosures are legible without having
13 to open any packaging;

14 H. Failing, in any "statements" as that term is used in Business and Professions Code
15 section 17500 about the amount of calling time or the per-unit rate offered to any given calling
16 destination, to take into account the application of any Ancillary Charges that will be incurred
17 regardless of a customer's usage pattern, *i.e.*, failing to disclose the "effective rate"; provided,
18 however, that the amount of calling time available or per-unit rate disclosed need not account for
19 Ancillary Charges that may or may not be incurred depending on a customer's usage pattern, and
20 which the Enjoined Parties cannot anticipate in advance, such as charges for calling to or from a
21 payphone or cell phone; further provided, however, that the Enjoined Parties shall disclose any
22 Ancillary Charges that may or may not be incurred in immediate proximity to any representation
23 of the amount of calling time and/or the per-unit rate, along with a statement to the effect that
24 such Ancillary Charges, if incurred, will affect the advertised amount of calling time or per-unit
25 rate.
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2 **Record-Keeping Requirements**

3 10. In order to enable the parties to determine the date on which a Prepaid Calling
4 Card was sold or otherwise placed in the stream of commerce, the Enjoined Parties shall
5 maintain records dating back one year from the date of entry of this Judgment which show their
6 sales or other transfers of Prepaid Calling Cards to wholesalers, distributors, retailers, end-use
7 consumers, or other purchasers.

8 **CIVIL PENALTIES**

9 11. Pursuant to Business and Professions Code sections 17206 and 17536 and Public
10 Utilities Code section 2107, the Named Defendants shall be jointly and severally liable to pay a
11 civil penalty in the amount of \$118,000, \$59,000 to the California Attorney General and \$59,000
12 to the California Public Utilities Commission. Such payment shall be made in monthly
13 installments of no less than \$7,500 (except for the final installment, which may be less than
14 \$7,500), until such sum is paid in full. Defendants Devine Communications, Inc. and Megalink
15 Telecom, Inc. shall make each and every monthly installment payment; provided, however, that
16 Defendant Douglas Devine shall make the required payment(s) in the event that Defendants
17 Devine Communications, Inc. and/or Megalink Telecom, Inc. fail to comply. Any such
18 payment(s) by Defendant Douglas Devine shall be due within five (5) business days after
19 Plaintiff gives notice of the deficiency to him by U.S. Mail sent to either of the addresses listed in
20 Paragraph 17 of this Judgment.

21 12. The Named Defendants' first monthly installment shall be due and payable on
22 entry of Judgment. All subsequent monthly installments shall be due no later than the first day of
23 the month; provided, however, that if the first monthly installment was paid less than two weeks
24 (14 days) prior to the first day of a month, the Named Defendants may make their second
25 installment on the first day of the next month.

26 13. Monthly installment payments shall be divided equally between the California
27 Attorney General's Office and the California Public Utilities Commission; Defendants shall
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2 deliver to Plaintiff's counsel a check for no less than \$3,750 made payable to the California
3 Attorney General's Office, and a separate check for no less than \$3,750 made payable to the
4 California Public Utilities Commission. Alternatively, the Named Defendants may deliver the
5 funds by separate wire transfers pursuant to the instructions set out in the Stipulation. Any
6 method of payment other than check or wire transfer shall be agreed to in writing by the parties.

7 14. Each party shall bear its own litigation costs, including any fee for the filing of the
8 stipulation for entry of Judgment.

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11 **OTHER PROVISIONS**

12 15. Consistent with the Stipulation, this Judgment resolves the above-captioned action
13 filed by Plaintiff against the Named Defendants, and is meant to resolve and is conclusive with
14 respect to those, and only those, matters set forth in the allegations of the Complaint filed in this
15 action and which occurred before entry of this Judgment.

16 16. The Named Defendants waive service of summons and complaint in this matter
17 and agree to accept service of the Notice of Entry of Judgment and the Judgment by U.S. mail on
18 their agent(s) for service of process in California or their above-referenced counsel. Defendant
19 Douglas Devine further agrees that service on him of the Notice of Entry of Judgment and the
20 Judgment may be effectuated by U.S. Mail sent to him at either of the following addresses:

21 2024 Divisidero Street, Suite 1

22 San Francisco, CA 94110

23 or

24 120 Morocco Drive, Building 2, Lot 5

25 Santa Rosa, Laguna 4026

26 Philippines

27 17. The Named Defendants agree to accept any further service related to the Judgment
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2 by U.S. Mail on their agent(s) for service of process in California. Defendant Douglas Devine
3 further agrees that any further service on him related to the Judgment may also be effectuated by
4 U.S. Mail sent to him at either of the addresses listed in Paragraph 16.
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6 **RETENTION OF JURISDICTION**

7 18. This Court shall retain jurisdiction over this matter for the purpose of enabling
8 any party to this Judgment to apply to the Court at any time for any further orders or directions as
9 may be necessary or appropriate, for the construction or carrying out of this Judgment, for
10 modification or termination of the injunctive provisions of this Judgment, or for enforcement of
11 any provisions of this Judgment.

12 19. This Judgment shall take effect immediately upon its entry.

13 20. The clerk is ordered to enter this Judgment forthwith.
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15 IT IS SO ORDERED:

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17 DATE: **APR 13 2007**

PETER J. BUSCH

[JUDGE] **JUDGE OF THE SUPERIOR COURT**